

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMIE JAYSON HAY,

Defendant-Appellant.

UNPUBLISHED

October 25, 2005

No. 256448

Oakland Circuit Court

LC No. 2003-191964-FH

Before: Cooper, P.J., and Fort Hood and Borrello, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of two counts of second-degree criminal sexual conduct (CSC), MCL 750.520c(1)(a) (sexual contact with a person under the age of thirteen).¹ He was sentenced as a habitual offender, third offense, MCL 769.12, to two concurrent terms of eight to thirty years' imprisonment. Defendant appeals as of right, and we affirm.

Defendant's convictions arise from sexual activities with his then eleven year old stepdaughter. The victim testified that she would ask defendant to purchase items for her when they went to the store alone together. Defendant told the victim he would purchase items for her in exchange for a "massage." After leaving the store, defendant would instruct the victim to rub his penis as he drove home. The victim did not report the incidents until months after they had occurred. The defense theory of the case was that the victim made false allegations after being confronted about her poor grades and after defendant revoked some of her computer privileges.

Defendant first alleges that the prosecutor presented insufficient evidence to support the second-degree CSC convictions. We disagree. Our review of a challenge to the sufficiency of the evidence is de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). When examining the sufficiency of the evidence, we must view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-

¹ Defendant was acquitted of a third count of second-degree CSC. He was also acquitted of one count of possession of child sexually abusive material, MCL 750.145c(4), and one count of using a computer to commit a crime, MCL 752.797(3)(a).

723; 597 NW2d 73 (1999). It is the role of the trier of fact, not the appellate court, to determine the inferences that may be fairly drawn from the evidence and the weight to be accorded those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). The assessment of credibility, when presented by two diametrically opposed versions of events, rests with the trier of fact. *People v Lemmon*, 456 Mich 625, 646; 576 NW2d 129 (1998). We do not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 amended 441 Mich 1201 (1992).

Defendant does not cite to the elements required to support a second-degree CSC conviction, but rather, attacks the credibility of the victim. Review of the record reveals that the defense explored the inconsistencies in statements made by the victim and her acknowledgment that she had lied when communicating with others on the Internet. The victim acknowledged that her poor grades caused her to lose privileges. Nonetheless, the victim testified that defendant manipulated her to obtain sexual favors. The jury determined that this testimony was credible, and we do not interfere with the jury's determination regarding credibility. *Wolfe, supra*. Therefore, this issue is without merit.

Defendant next alleges that it was error to submit a still photograph to the jury without a date stamp, and that the prosecutor committed misconduct by providing imperfect or misleading items. Defendant, as the appellant, had the duty to file the full record on appeal, and we limit on review to what is presented on appeal. *Band v Livonia Associates*, 176 Mich App 95, 103-104; 439 NW2d 285 (1989). Defendant did not present the exhibits or discovery materials such that we could determine if any impropriety occurred. Moreover, defendant was acquitted of the charges to which this evidence pertained. Therefore, this challenge is without merit.

Affirmed.

/s/ Jessica R. Cooper
/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello